STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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September 26, 1990

Honorable Bruce Reeves
Assessor of Monterey County
Courthouse
P. O. Box 570
Salinas, CA 93902

Attention: Gary Obney
Appraiser II

This is in response to your letter of July 25, 1990, in which you request our opinion as to the applicability of Proposition 58 under the following facts set forth in your letter.

On July 13, 1982, Madeline L. Swanson died testate in Monterey County. In her will which was admitted to probate, she left her residence in Carmel to her sister-in-law, Mary Kuzel, for life with the remainder interest to her nephew, Michael R. Kuzel, Mary's son. The property is not Mary's principal residence.

On May 2, 1990, Mary transferred her life estate to Michael by quitclaim deed.

You have asked whether Mary's transfer to Michael is excluded from change in ownership by Proposition 58.

Revenue and Taxation Code* Section 60 defines "change in ownership" as "a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest."

Section 61 provides in relevant part that "[e]xcept as otherwise provided in Section 62, change in ownership, as defined in Section 60, includes, but is not limited to: * * * [¶](f)[a]ny vesting of the right to possession or enjoyment of a remainder or reversionary interest which occurs upon the termination of a life estate or other similar precedent property interest, except as provided in subdivision (d) of Section 62 and in Section 63."

*All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

Section 62 provides in relevant part that "[c]hange in ownership shall not include: * * * [¶](d)[a[ny transfer by the trustor, or by the trustor's spouse, or by both, into a trust for so long as (1) the transferor is the present beneficiary of the trust, or (2) the trust is revocable; or any transfer by a trustee of such a trust described in either clause (1) or (2) back to the trustor; * * * [or] (e) [a]ny transfer by an instrument whose terms reserve to the transferor an estate for years or an estate for life; however, the termination of such an estate for years or estate for life shall constitute a change in ownership, except as provided in subdivision (d) and in Section 63."

Property Tax Rule 462 (d) (1) provides:

> "(1) Life estates. The creation of a life estate in real property is a change in ownership at the time of transfer unless the instrument creating the life estate reserves such estate in the transferor or the transferor's spouse. However, the subsequent transfer of such a life estate by the transferor or the transferor's spouse to a third party is a change in ownership. Upon termination of such a reserved life estate, the vesting of a right to possession or enjoyment of a remainderman (other than the transferor or the transferor's spouse) is a change in ownership."

Proposition 58 was adopted by the California electorate in November 1986, and added subdivision (g) (h) and (i) to Section 2 of Article XIII A of the California Constitution. Subdivision (h) provides in relevant part that "the terms 'purchased' and 'change of ownership' shall not include the purchase or transfer of the principal residence of the transferor in the case of a purchase or transfer between parents and their children * * * and the purchase or transfer of the first $1,000,000 of the full cash value of all other real property between parents and their children * * *. This subdivision shall apply to both voluntary transfers and transfers resulting from a court order or judicial decree." Section 63.1 is the implementing legislation for Subdivision (h) and is to the same effect.

Property Tax Rule 462 (d) (1) makes it clear that the transfer of a life estate is a change in ownership. Thus, had Mary Kuzel transferred her life estate to someone other than her spouse, parent or child, such transfer clearly would have been a change in ownership under Section 60 and Property Tax Rule 462 (d) (1) regardless of whether the transferee owned the remainder interest in the property. Moreover, such change in ownership

would be of the entire property not merely of the life estate. Thus, the legal effect of the transfer would be the same as if the full fee simple interest had been transferred and the full fee interest rather than the life estate would be reappraised. Accordingly, the legal effect of Mary's transfer of her life estate to her son is the same for purposes of determining whether a change in ownership occurred as if she had transferred the full fee simple interest in the property to him. The fact that he owned the remainder is not material to this conclusion.

Since the transfer of the life estate is between parent and child, the transfer is excluded from change of ownership under the provisions of Proposition 58 quoted above to the extent that the transfer does not exceed the "full cash value" limitations of those provisions. This conclusion does not end our inquiry, however.

We assume that the life estate terminated after it was transferred to Michael because under California law the ownership of a life estate and a remainder by the same person results in a merger of the two interests. The question then arises whether there would be a change in ownership under section 61(f) quoted above as a result of the termination of the life estate. Clearly, there is a change in ownership under section 61(f) where a life estate terminates as a result of the death of the life tenant and the remainder vests in possession in another person, unless excluded under the interspousal or parent-child provisions. It is our position that where a life estate terminates as a result of the death of the life tenant, the transfer to the remainderman is from the transferor of the remainder interest. Thus, if Mary had not transferred her life estate to Michael but instead had continued to own it until her death, the parent-child exclusion would not have been applicable because the transfer under section 61(f) to Michael would have been from his aunt, Madeline, rather than from his mother, Mary. In that case, there would be a change in ownership under section 61(f) and Rule 462(d)(1).

The question is whether section 61(f) applies where a life estate terminates not as a result of the death of the life tenant but rather because the life tenant also owns the remainder interest and there is a merger of the two interests. This question can arise both where there is a transfer of the life estate to the person who owns the remainder, as in this case, or where there is a transfer of the remainder to the person who owns the life estate.

With certain express exceptions, Section 61(f) provides a broad rule that "any vesting of the right to possession or enjoyment

of a remainder or reversionary interest which occurs upon the termination of a life estate" is a change in ownership. The vesting of the remainder interest as the result of the termination of a life estate caused by merger, as in this case, must be considered to result in a change in ownership unless the vesting of the remainder interest falls within the exceptions provided in the statute or regulations. Section 61(f) expressly recognizes two exceptions which are not applicable to this situation. The first exception is Section 62(d) which excludes from change in ownership certain transfers of property by a trustor into trust and transfers by a trustee back to the trustor. Nothing in this subdivision appears to relate to the vesting of a remainder interest as the result of the termination of a life estate caused by merger. The second exception to Section 61(f) is Section 63, relating to interspousal transfers. Again, the interspousal provisions appear to have no relation to the question under examination.

Rule 462(d)(1), in part, provides a further exception in the case of the termination of a reserved life estate. It provides that the vesting of the remainder interest constitutes a change in ownership unless the remainder interest is vested in the transferor or the transferor's spouse. Similar language is found in subdivision(d)(2), relating to a reserved estate for years. Thus, Rule 462(d)(1) and (2) provide further exceptions to the general rule found in Section 61(f) that any vesting of a remainder interest which occurs upon the termination of a life estate constitutes a change in ownership.

It is apparent that, as an exception to Section 61(f), Rule 462(d)(1) can apply where the remainder interest vests not as a result of the death of the life tenant but because of the merger of the life estate and the remainder interest. For example, if the owner of Black Acre transfers a future interest in it to B while reserving a life estate and later reacquires the remainder interest, there would be no change in ownership of Black Acre as the result of section 61(f) because it would be excluded by the terms of the rule. It also seems clear, however, that the exception to the general rule created by Rule 462(d)(1) is limited to situations where the remainder interest vests in the transferor or the transferor's spouse. While we recognize that it may be possible to argue that there should be a broader exception recognized which would exclude from change in ownership any vesting of a remainder interest arising as a result of merger, we conclude that we are unable to find any support for that argument in either the statute or the regulation. Accordingly, the only exceptions to the general rule provided by section 61(f) are those exceptions expressly provided in the section or in Rule 462(d)(1) and (2).

Since Michael R. Kuzel was not the transferor in this case, the vesting of his remainder interest as the result of the termination of the life estate constitutes a change in ownership under section 61(f). Thus, while the change in ownership occurs at a date sooner than it would have if Michael's mother had retained her life estate, the result is essentially the same. The effect of Mary's transfer of her life estate to Michael is to accelerate the date of the change in ownership arising from the vesting of the remainder interest rather than to avoid it. Further, while the transfer of Mary's life estate to her son is excluded from change in ownership by Proposition 58 and Section 63.1 the resultant vesting of Michael's remainder interest is not so excluded and, therefore, constitutes a change in ownership.

The views expressed herein are, of course, advisory only.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,

Richard H. Ochsner
Assistant Chief Counsel

RHO:sp
2582D

cc: Mr. John Hagerty
Mr. Verne Walton
Mr. Eric Eisenlauer